IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1529 of 2007

R.Raja .. Petitioner

Vs

1. State of Tamil Nadu,
   Rep. by its Secretary to Govt.,
   Prohibition and Excise Department
   Fort St.George, Chennai.

2. The District Magistrate and
   District Collector,
   Cuddalore District, Cuddalore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records in detention order passed in C4/D.O/27/2007 dated 4.8.2007 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the body of petitioner's cousin brother Rajendran, now confined in Central Prison, Cuddalore before this Court and set him at liberty as stated therein.

For Petitioner : Mr.C.Ramkumar

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Made by P.D.DINAKARAN,J.)

Aggrieved by the order of detention dated 4.8.2007 made in C4.D.O.No.27/2007 passed by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) to detain one Rajendran, branding him as a Bootlegger, the

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petitioner, who is the cousin brother of the detenu, filed the above petition seeking to quash the order of detention and to direct the respondents to produce the detenu, now confined at Central Prison, Cuddalore, before this Court and set him at liberty.

2. On the basis of the complaint lodged by one K.Somu that on 23.7.2007 at about 9.00 hours he purchased arrack from the detenu and after consuming the same, he got giddiness, irritation in the eyes, vomitted and fell down and suspecting that some poisonous substance would have been mixed in the arrack, he lodged a complaint before the Inspector of Police, Puduchathiram Police Station, based on which, the detenu was arrested and samples of illicit arrack were seized and a case in Crime No.155 of 2007 for offences under Sections 4(1)(i) & 4(1-A) of the Tamil Nadu Prohibition Act was registered against the detenu. Samples of arrack found admixed with 2.89% mg. w/v of atropine, as per the opinion of the doctor.

3. The second respondent, taking note of the above case as the ground case and finding that there are four adverse cases of similar nature, three on the file of Chidambaram Prohibition Enforcement Wing Cr.Nos.485/2006, 342/2007 and 370/2007 and one on the file of Puduchathiram P.S.Cr.No.64/2007, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and health, ordered his detention dubbing him as a 'Bootlegger'.

4. The learned counsel for the petitioner inviting our attention to the FIR and arrest memo, contends that there is no possibility of mentioning the crime number in the memo of arrest showing the time of arrest of the detenu at 12.15 p.m. on 23.7.2007, when the information itself was received at the police station only at 2.30 p.m. as per the FIR and therefore, the said discrepancy vitiates the order of detention.

5. We have heard the learned Additional Public Prosecutor on the above point and also perused the materials placed before us.

6. It is seen from the paper book placed before us that in the memo of arrest, the detenu was shown to have been arrested at about 12.15 p.m. on 23.7.2007 and it also contains the crime number as Cr.No.155 of 2007. But, in the F.I.R., it is stated that the information itself was received at the police station only at 2.30 p.m. If that be so, the detaining authority has not applied their mind as to how the crime number of the case could be mentioned in the memo of arrest, when the information itself was received by the police at a later point of time, which, in our considered opinion, vitiates the order of detention.

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In the result, the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition & Excise Department
   Fort St. George, Chennai 9.

2. The District Magistrate and
   District Collector of
   Cuddalore District, Cuddalore.

3. The Superintendent,
   Central Prison, Cuddalore.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order) Department,
   Fort St.George, Chennai-9

ASM(CO)
DCP/5.1

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